IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 198 of 2003.

Judgment reserved on: 19.4.2007.

Decided on: April 24th, 2007.

Ram Pal and others.

… … … **Petitioners.**

Versus

State of Himachal Pradesh & Others.

… … … **Respondents.**

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?

For the petitioners: **Mr. Sanjeev Bhushan, Advocate.**

For Respondent No.1 & 2: **Mr. M.S. Chandel, Advocate Genera with Mr. Ashutosh Burathoki, Addl. Advocate General and Ms. Meenakshi Sharma, Deputy Advocate General.**

For Respondent No.3 **Mr. H.K. Bhardwaj, Advocate.**

Rajiv Sharma, Judge:

This petition is directed against the order passed by the Financial Commissioner (Appeals) dated 23.12.2002, inter alia, on the ground that the application preferred by the petitioners under Order 6 Rule 17 of the Civil Procedure Code, 1908 has not been decided before the decision.

The brief facts necessary for adjudication of this

Whether reporters of local papers may be allowed to see the judgment?

petition are that the petitioners have filed a revision petition before the Financial Commissioner (Appeals) against the order dated 11.2.2002 passed by the Deputy Commissioner, Una exercising the powers of Commissioner under the H.P. land Revenue Act, whereby the revision petition filed by the petitioners was dismissed.

There is a specific averment in the petition to the effect that the application was filed by the petitioners before the Financial Commissioner (Appeals) under Order 6 Rule 17 of Civil Procedure Code, 1908 to assail the order dated 24.4.2000 on the ground that the same was without jurisdiction. Accordingly, the notices were issued as per the averments contained in this petition on the application filed under Order 6 Rule 17 CPC and the respondent No.3 has also filed reply to the application. The respondent No.3 in reply to the writ petition has not denied the averments with regard to filing of application, but has stated that the application was without merit.

Mr. Sanjeev Bhushan has contended that it was incumbent upon respondent No.2 to dispose of the application filed under Order 6 Rule 17 of the Civil Procedure Code before the decision dated 23.12.2002. He has further contended that since the application has not been decided by the Financial Commissioner (Appeals, i.e. respondent No.2 separately nor the same finds mention in the order dated 23.12.2002.

The learned counsel appearing on behalf of respondent No.3 contended that it was not necessary in view of

peculiar facts and circumstances of the case to adjudicate upon the application filed by the petitioner before the Financial Commissioner (Appeals). Mr. Bhardwaj has also argued that the matter has legally been decided by the Financial Commissioner (Appeals) after hearing the parties and the Financial Commissioner (Appeals) has not committed any illegality or irregularity by not deciding the application. Mr. Bhardwaj further argues that the decision of the application could not have altered the merits of the case.

I have perused the record and heard the parties. I am of the opinion that once the application under Order 6 Rule 17 had been filed by the petitioners before the Financial Commissioner (Appeals), the same was to be adjudicated upon and some order either way was required to be passed before the final decision. Since, admittedly, the application preferred by the petitioners has not been decided, it has led to procedural impropriety. Though the provisions of Civil Procedure Code are not to be strictly applied to the Revenue Courts, but the principles of the Civil Procedure Code are to be taken into consideration at the time of adjudication of the petition. The act of Financial Commissioner (Appeals) of not disposing the application has seriously prejudiced the petitioners. The order dated 23.12.2002 is thus, liable to be quashed and set aside. Accordingly, this petition is allowed. The order dated 23.12.2002 passed by Financial Commissioner (Appeals) is quashed and set aside. The Financial

Commissioner (Appeals), respondent No.2 is directed to re-hear the Revenue Revision 39/2002 including the application filed under Order 6 Rule 17 of Civil Procedure Code by the petitioners within a period of three months. To avoid delay, the parties are directed to appear before respondent No.2, i.e. Financial Commissioner (Appeals) on 25th May, 2007 at 10.00 A.M. There shall be no order as to costs.

(Rajiv Sharma)
Judge

April 24th, 2007.
(sck)